

Securities and Exchange Commission

§ 250.51

transaction which involves the filing of an application or declaration with the Commission by such subsidiary company.

(2) Any such subsidiary company which is subject to regulation as a water, telephone, common carrier or other public service company, under the laws of the State in which it operates, shall be exempt from section 9(a) of the Act with respect to any acquisition expressly authorized by the State commission of such State provided that such acquisition does not include utility assets, securities of a public utility or holding company, or any other interest in any class of business other than that in which such public service company is engaged.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 12 FR 1649, Mar. 11, 1947; 59 FR 21928, Apr. 28, 1994]

§ 250.50 [Reserved]

§ 250.51 Acquisitions pursuant to preliminary agreements and invitation for tenders.

For the purpose of section 9(a) of the Act, the term “acquire” is defined to include the making of a contract or agreement (herein called Preliminary Agreement) pursuant to which a person subject to section 9(a) (of the Act) (herein called the Proposed Acquirer) contingently or otherwise acquires any right or becomes subject to any obligation to acquire directly or indirectly any securities or utility assets or any other interest in any business, or to direct any other person to make any sale or acquisition of any securities or utility assets or any other interest in any business. Except where an exemption from section 9(a) (of the Act) may be applicable, the making of such Preliminary Agreement or the taking of any action in connection therewith, without prior approval of the Commission, by any person so subject to section 9(a) (of the Act) shall be deemed unlawful, unless all of the following conditions are satisfied:

(a) The transaction contemplated by the Preliminary Agreement is expressly conditioned on Commission approval and the application for such approval is filed with the Commission as soon as practicable.

(b) No standby, option, or similar fee is paid or payable by or on behalf of the Proposed Acquirer as consideration for the Preliminary Agreement.

(c) The Proposed Acquirer does not indemnify or agree to indemnify any person against any market or investment risk in connection with such person's acquisition, retention or disposition of the subject matter of the proposed acquisition.

(d) The Proposed Acquirer does not transfer to any person (other than a subsidiary or successor in interest by merger or consolidation), by way of assignment or otherwise, any of its rights or interests in respect of the subject matter of the proposed acquisition unless such transfer is conditioned upon consummation of the Preliminary Agreement following its approval by the Commission.

(e) In case a proposed transaction includes an acquisition of securities pursuant to an invitation for tenders to be made prior to the approval of such acquisition, provision shall be made that any person tendering such securities (the Tenderer) may demand in writing the return of any deposited securities at any time after 60 days from the initial mailing or publication of the invitation for tenders unless prior to the receipt of such demand either (1) the proposed acquisition has been approved by the Commission and the Proposed Acquirer is obligated to consummate the transaction or (2) the Tenderer has been issued a transferable certificate of deposit which meets the conditions specified in paragraph (f) of this section.

(f) A transferable certificate of deposit for purposes of paragraph (e) of this section may be issued in exchange for tendered securities subject to the following conditions:

(1) The terms of the certificate of deposit as proposed to be issued are specified in the invitations for tenders, including equitable provisions for return of the tendered securities in the event the proposed transaction is not approved by the Commission or otherwise fails of consummation, for exercise of voting rights and for receipt of dividends or interest by the Tenderer during the deposit period.